

4.0 Environmental Consultation, Review, and Permit Requirements

4.1 National Environmental Policy Act

This environmental assessment was prepared according to NEPA (42 USC 4321 et seq.). NEPA is a national law for protection of the environment. NEPA applies to all federal projects or projects that require federal involvement. BPA considers potential environmental consequences and would take action to protect, restore, and enhance the environment.

4.2 Threatened and Endangered Species

The Endangered Species Act of 1973 (ESA), as amended, requires that federal agencies ensure that their actions do not jeopardize threatened or endangered species and their critical habitats; it also gives review authority to USFWS and NMFS. Sections 3.7.2 and 3.6.2 discuss potential impacts to threatened and endangered species from the proposed project.

BPA is consulting with both USFWS and NMFS on the impacts of the project to threatened and endangered species. A **Biological Assessment** has been prepared to evaluate the potential effect of the project on threatened and endangered species. The BA was prepared to evaluate the potential of the project to adversely affect the bald eagle, northern spotted owl, Fender's blue butterfly, the Upper Willamette River chinook salmon ESU, the Upper Willamette River steelhead ESU, Oregon chub, Nelson's checker-mallow, Bradshaw's lomatium, Willamette daisy, golden Indian paintbrush, water Howellia, and Kincaid's lupine. The BA was submitted to the NMFS and the USFWS for concurrence with BPA's determination of effect on federally-listed species under Section 7 of the Endangered Species Act. BPA would employ best management practices and the mitigation measures identified in the BA and this EA to reduce the potential disturbance to native plant communities, to reduce the potential for erosion and sedimentation, and to prevent the introduction of harmful chemicals in all surface waters associated with these species.

Plants – Potential effects to federally-listed plant species could occur if areas of documented habitat or potential habitat were disturbed or altered during the construction of the project. The only area of documented or potential habitat for these species in the project area is a wetland located in mile 7. BPA would avoid disturbance to this area during construction by limiting access of construction equipment from the area and including mitigation measures to prevent the spread of nonnative plant species. With these mitigation measures in place, the potential to affect habitat for these species is minor.

Animals – According to the Oregon Department of Fish and Wildlife Natural Heritage data, no bald eagle nests are located within 1/2 mile of the project ROW. This distance is the typical distance at which impacts to nest sites are evaluated, as mandated by the Pacific States Bald Eagle Recovery Plan (USFWS, 1986). Since no known bald eagle nesting or winter roosting/foraging habitat occurs in the project vicinity, direct impacts to either nesting bald eagles or bald eagle roosting or foraging behaviors are not expected to occur as a result of project implementation.

Removal of danger trees within the riparian areas of fish bearing streams could result in a loss of potential perch trees for roosting or foraging bald eagles in these areas. Bald eagle foraging habitat within the project area is expected to occur primarily on the North Santiam River and Mill Creek, both of which are known to support adult salmon in the vicinity of the project. However, the selective tree removal south of the North Santiam River would affect only a small portion of the available trees and would not make the potential habitat unsuitable. Eagles potentially using these areas during project implementation could be temporarily displaced due to construction activity. However, temporary displacement of eagles would be a minor impact.

The project area does not cross any known spotted owl home range territories, is not located within critical habitat for this species, and does not contain suitable nesting or foraging habitat for spotted owls. Project implementation would not alter or remove any suitable spotted owl habitat. Selective removal of danger trees along the ROW would include trees within forested areas that may serve as spotted owl dispersal habitat. However, since this would only occur along the edge of the previously cleared ROW, it would not alter the habitat in such a way as to make it unsuitable. For these reasons, no direct impacts on spotted owls or their habitats are expected to occur in conjunction with this project.

The only potential habitat for Fender's blue butterfly in the project area is the area of upland native plant communities in mile 7. Since all towers are scheduled for replacement, ground disturbance would occur in the vicinity of this area. If this area is disturbed, potential direct impacts to Fender's blue butterfly could include alteration or loss of potential habitat and potential mortality of individuals. Alteration of native plant communities documented in the vicinity of mile 7 in conjunction with project implementation would alter potential habitat for this species. BPA would avoid disturbance to areas of native vegetation by limiting ground disturbance within the area of known native vegetation and limiting construction activities and access to locations within the previously disturbed site of the tower footprint, existing roads, and areas outside of the patch of native vegetation.

BPA has also included mitigation measures to prevent the spread of non-native plant species. With these mitigation measures in place, the potential to affect Fender's blue butterfly or its potential habitat is minor.

Potential impacts to threatened and endangered fish species are consistent with the potential impacts to all fish species (i.e., increased turbidity, sediment delivery, decreased shading) as discussed in Section 3.7.2. With the mitigation measures proposed for this project, these potential impacts to threatened and endangered fish would be minor.

In conclusion, based on a review of the latest federal threatened and endangered species lists, review of habitat requirements, and use of project mitigation measures proposed in the BA and this EA, it is BPA's opinion that the proposed project "may affect but is not likely to adversely affect" all the listed species that may be present in the project area except the northern spotted owl. It is BPA's opinion that the proposed project would have "no effect" on the northern spotted owl.

See also Section 3.7.4.

4.3 Fish and Wildlife Conservation

The Fish and Wildlife Conservation Act of 1980 (16 USC 2901 et seq.) encourages federal agencies to conserve and promote conservation of non-game fish and wildlife species and their habitats. In addition, the Fish and Wildlife Coordination Act (16 USC 661 et seq.) requires federal agencies undertaking projects affecting water resources to consult with the U.S. Fish and Wildlife Service and the state agency responsible for fish and wildlife resources. The analysis in Section 3.7, Fish and Wildlife, indicates that the alternatives would have no to low impacts to fish and wildlife.

4.3.1 *Essential Fish Habitat*

Public Law 104-297, the Sustainable Fisheries Act of 1996, amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to establish new requirements for "Essential Fish Habitat" descriptions in federal fishery management plans and to require federal agencies to consult with NMFS on activities that may adversely affect EFH. The Magnuson-Stevens Act requires all fishery management councils to amend their fishery management plans to describe and identify EFH for each managed fishery. The Pacific Fishery Management Council has issued such an amendment in the form of Amendment 14 (1999) to the Pacific Coast Salmon Plan. This amendment covers EFH for all fisheries under NMFS' jurisdiction that would potentially be affected by the Proposed Action. Specifically, these are the chinook and coho salmon fisheries. EFH includes all streams, lakes, ponds, wetlands, and other currently viable water bodies and most of the habitat historically accessible to salmon. Activities occurring above impassable barriers that are likely to adversely affect EFH below impassable barriers are subject to the consultation provisions of the Magnuson-Stevens Act.

Under the Magnuson-Stevens Act, NMFS must be consulted by any federal agency undertaking, permitting, or funding activities that may adversely affect EFH, regardless of its location. Under section 305(b)(4) of the act, NMFS is required to provide EFH conservation and enhancement recommendations to federal and state agencies for actions that adversely affect EFH. Wherever possible, NMFS uses existing interagency coordination processes to fulfill EFH consultations with federal agencies. For the Proposed Action, this goal would be met by incorporating EFH consultation into the Endangered Species Act Section 7 consultation. The proposed project would neither destroy nor adversely modify critical habitat for chinook salmon or steelhead, or EFH for chinook or coho salmon.

4.3.2 *Migratory Bird Treaty Act*

The Migratory Bird Treaty Act (16 U.S.C. 703-712, July 3, 1918, as amended 1936, 1960, 1968, 1969, 1974, 1978, 1986 and 1989) (MBTA) implements various treaties and conventions between the United States and other countries, including Canada, Japan, Mexico, and the former Soviet Union, for the protection of migratory birds. Under the act, "taking," killing, or possessing migratory birds or their eggs or nests is unlawful. Most species of birds are classified as migratory under the act, except for upland birds such as pheasant, chukar, and gray partridge.

The Act allows few exemptions, such as waterfowl hunting. Many types of development result in the taking of migratory birds: collision with windows, for example, is a leading cause of

death among songbirds. Taking may be allowed under a scientific permit if research is deemed beneficial to migratory birds.

Construction, operation and maintenance of the proposed project may result in some impacts to birds. Some of the potentially impacted bird species are protected under the Migratory Bird Treaty Act. There are presently no permits available to federal agencies for “incidental take” such as would result from the proposed transmission line project. The Department of Energy is presently negotiating a MBTA Memorandum of Agreement with the USFWS that is expected to include avian mortality due to transmission system impacts. Potential impacts to migratory birds include loss of habitat. Impacts would be limited to individuals potentially nesting in the area and would be incidental to the action. The reduction in nesting habitat for these species is expected to be minor. BPA would ensure appropriate mitigation measures are employed to reduce the risk of mortality to a minimum.

4.4 Cultural and Historical Resources

4.4.1 National Historic Preservation Act

The National Historic Preservation Act (1966, 16 U.S.C. 470) requires Federal agencies to take into account the potential effects of their undertakings on properties on or eligible for the National Register of Historic Places. Based on the result of the background research and field investigations, the proposed project would not adversely affect any cultural resources.

4.4.2 Archaeological Resources Protection Act

The Archaeological Resources Protection Act prohibits excavation, removal, damage, or other alteration or defacement of archeological resources on federal or Indian lands without a properly issued permit. Based on the result of the background research and field investigations, the proposed project would not adversely affect any cultural resources.

4.4.3 American Indian Religious Freedom Act

The American Indian Religious Freedom Act requires federal land managers to include consultation with traditional Native American religious leaders in their management plans and guarantees First Amendment rights for traditional religions. Based on the result of the background research and field investigations, the proposed project would not adversely affect any cultural resources.

4.4.4 Historic Sites Act

The Historic Sites Act of 1935, the basis for the National Historic Landmarks Program, provides for the preservation of historic American sites, buildings, objects and antiquities of national significance. Based on the result of the background research and field investigations, the proposed project would not adversely affect any cultural resources.

4.4.3 *Native American Graves Protection and Repatriation Act*

The Native American Graves Protection and Repatriation Act of 1990 (PL101-601) recognizes the property rights of Native Americans in certain cultural items, including Native American human remains, funerary objects, sacred objects, and items of cultural patrimony. In cases involving the inadvertent discovery of Native American human remains or defined cultural items during activities occurring on federal or tribal lands, the activity must be halted temporarily, the items protected, and the appropriate federal agency and tribal authority notified of the discovery.

Based on the results of the background research and field investigations, the proposed projects would not adversely affect any cultural resources.

4.5 State, Areawide, and Local Plan and Program Consistency

This project does not fall within the coastal zone of the state of Oregon. BPA has no federal obligation to obtain state and local permits, but the agency would strive to meet or exceed the substantive standards and policies of state and local planning jurisdictions.

4.6 Floodplains and Wetlands Protection

4.6.1 *Floodplain/Wetland Assessment*

Department of Energy regulations on compliance with Floodplain/Wetlands environmental review requirements (10 CFR 1022.12) and Federal Executive Orders 11988 and 11990 require BPA to prepare an assessment of the impacts of the alternatives on floodplains and wetlands. BPA published a notice of floodplain/wetland involvement for this project in the *Federal Register* on May 11, 2001. An assessment of wetland impacts is provided in Section 3.8, Wetlands and Section 3.9, Floodplains.

4.7 Farmland Protection Policy Act

The Farmland Protection Policy Act (7 U.S.C. 4201 et seq.) directs federal agencies to identify and quantify adverse impacts of federal programs on farmlands. The Act's purpose is to minimize the number of federal programs that contribute to the unnecessary and irreversible conversion of agricultural land to non-agricultural uses.

An evaluation of soil survey information for the existing transmission line ROW indicated that the majority of the ROW in Linn and Marion counties, Oregon, is located in prime farmland soils. The proposed project would be constructed entirely in an existing ROW, and within existing structure footprints, except in one location where 3 new poles would be installed to facilitate crossing under other existing utilities. The 3 new poles would be installed in existing ROW. Therefore, no designated prime, unique, or other farmland of statewide importance outside of the existing ROW would be converted under the proposed action. Evaluation of the project according to the criteria set forth in the Act indicates the Proposed Action would be in compliance with the Act and would have little or no impact on area farmlands.

4.8 Discharge Permits under the Clean Water Act

The Clean Water Act (CWA) regulates discharges into waters of the United States. The following sections of the CWA could potentially apply to this project.

4.8.1 Federal

Section 401 – The Water Quality Certification program requires that states certify compliance of federal permits and licenses with state water quality standards. A federal permit to conduct an activity that results in discharges into waters of the United States, including wetlands, is issued only after the affected state certifies that existing water quality standards would not be violated if the permit were issued. For this project, the Oregon Department of Environmental Quality would review necessary permits for compliance with state water quality standards.

Section 402 – This section authorizes stormwater discharges associated with industrial activities under the National Pollutant Discharge Elimination System (NPDES). For Oregon, the EPA has a general permit authorizing federal facilities to discharge stormwater from construction activities disturbing land of 5 or more acres into waters of the United States, in accordance with various set conditions. BPA would comply with the appropriate conditions for this project and would prepare a Storm Water Pollution and Prevention (SWPP) plan. The plan helps ensure that erosion control measures would be implemented and maintained during construction. It also addresses best management practices for stabilization, stormwater management, and other controls.

Section 404 – Authorization from the Corps of Engineers is required in accordance with the provisions of Section 404 when dredged or fill material is discharged into waters of the United States, including wetlands. This includes excavation activities that result in the discharge of dredged material that could destroy or degrade waters of the United States.

The construction and upgrade of access roads could potentially impact waters of the United States. New poles and other structures would be located outside wetland boundaries where possible. Field surveys have been conducted to identify wetlands and ensure compliance. If permits are necessary, authorization would be sought from the Corps and appropriate state agencies.

4.8.2 State

The Oregon Division of State Lands administers the Removal-Fill Law that requires a permit for removal, fill, or alteration involving 50 cubic yards or more of material in any water of the state including wetlands. Appropriate permits would be applied for if necessary for this project. See Section 4.14.

4.9 Permits for Structures in Navigable Waters

The proposed project would not involve construction, removal, or rehabilitation of any structures in navigable waters. BPA transmission towers would span all water sources.

4.10 Noise Control Act

The Federal Noise Control Act of 1972 (42 U.S.C. 4903) requires that federal entities, such as BPA, comply with state and local noise requirements. See Section 3.12, Public Health and Safety.

4.11 Global Warming

The proposed project would clear 14 danger trees including nine cottonwoods, one Douglas fir, one Lombardi poplar, one oak, and one Oregon ash. These trees and plants would change from collectors of carbon to emitters of carbon in the form of carbon dioxide (a greenhouse gas) as they degrade rather than grow. The Proposed Action's contribution to global warming would be minor because the amount of tree clearing would be small and because low-growing vegetation would naturally revegetate cleared areas.

4.12 Executive Order on Environmental Justice

In February 1994, Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority and Low-income Populations*, was released to federal agencies. This order directs federal agencies to incorporate environmental justice as part of their missions. As such, federal agencies are specifically directed to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations.

This action has been evaluated for potential disproportionately high environmental effects on minority and low-income populations (see Section 3.2, Socioeconomics). There would be a low human health or environmental impact on minority and low-income populations from the proposed project.

4.13 Resource Conservation and Recovery Act

No hazardous waste products would be used, discarded or produced by this project. Solid wastes would be disposed of at an approved landfill or recycled.

4.14 State Agency Authorities and Regulations

The **State Removal/Fill Law (ORS 196.810)** – The Removal/fill law requires that a permit be obtained from the Division of State Lands for either placing 50 cubic yards (or more) of fill into or removed from waters of the U.S. The applicant would state the nature and quantity of fill or material to be removed, together with the location, time and method to be used. If permits are necessary, authorization would be sought from the Corps and appropriate state agencies.

The **State Air and Water Quality Standards** – The proposed project would not affect the chemical or biological characteristics of water in the area. It would be designed to comply with local ordinance, laws, and state water quality programs so as not to degrade the quality of shoreline areas or adjacent surface waters. (See also Section 3.10, Water Quality.)

The proposed project's contribution to global warming would be minor due to the small amount of tree clearing that would be required, and the cleared areas would be revegetated with low-growing plants.

4.15 Safe Drinking Water Act

The Safe Drinking Water Act (42 U.S.C. Section 300f et seq.) is designed to protect the quality of public drinking water and its sources. BPA would comply with state and local public drinking water regulations. The proposed project would not affect any sole source aquifers or other critical aquifers, or adversely affect any surface water supplies.

4.16 Federal Insecticide, Fungicide, and Rodenticide Act

It is unlikely that herbicides would be used during project construction. However, herbicides might be used occasionally to maintain the ROW. Only EPA-approved herbicides would be used, selectively applied by licensed applicators according to label instructions. For more information on BPA's proposed vegetation management program, see BPA's Transmission System Vegetation Management Program Final Environmental Impact Statement (DOE/EIS-0285, June 2000) for a thorough discussion of compliance with pertinent standards.

4.17 Toxic Substances Control Act

No toxic substances would be manufactured or used on this project.

4.18 Clean Air Act

The proposed project would not result in emissions remaining under BPA control. No burning would take place as a result of the proposed project. Trees and slash that are cleared would not be burned. Vehicles used during the construction of the proposed project would be properly maintained so as to minimize emissions.

4.19 Permits for Rights-of-Way on Public Lands

No additional easements or permits for rights-of-way on federal or state lands would be required. BPA would coordinate with landowners before conducting any activities outside the ROW boundaries.

4.20 Energy Conservation at Federal Facilities

The Proposed Action would not require any new buildings.

4.21 Notice to the Federal Aviation Administration

As part of transmission line design, BPA seeks to comply with Federal Aviation Administration (FAA) procedures. Final locations of towers, tower types, and tower heights are submitted to FAA for the project. The information includes identifying towers taller than 200 feet above ground, and listing all towers within prescribed distances of airports listed in the FAA airport directory. BPA also assists the FAA in field review of the project by identifying tower locations. The FAA then conducts its own study of the project, and makes recommendations to BPA for airway marking and lighting. General BPA policy is to follow FAA recommendations. At the North Santiam River crossing, marker balls would be installed on the conductor to make it more visible to pilots.

